case, that it is "difficult, if not impossible, to define with exactness just how far the general maritime law may be changed, modified, or affected by state legislation." Additional legislation by Congress upon the subject would seem to be desirable

CONSTITUTIONAL LAW—REGULATION OF INTERSTATE COMMERCE—VALIDITY OF THE "REED AMENDMENT."—The so-called "Reed Amendment" provides as follows: ". . . Whoever shall order, purchase, or cause intoxicating liquors to be transported in interstate commerce, except for scientific, sacramental, medicinal, and mechanical purposes, into any State or Territory the laws of which State or Territory prohibit the manufacture or sale therein of intoxicating liquors for beverage purposes, shall be punished as aforesaid: *Provided,* That nothing herein shall authorize the shipment of liquor into any State contrary to the laws of such State . . ." The defendant carried for his own personal use a quart of intoxicating liquor from Kentucky into West Virginia, a state in which the manufacture and sale of intoxicating liquors for beverage purposes was then prohibited. *Held,* that the act of the defendant was a violation of the Amendment and that the latter was a valid regulation of interstate commerce. McReynolds and Clarke, JJ., *dissenting. The United States v. Hill* (1919) 39 Sup. Ct. 143.

The district court had sustained a demurrer to the indictment chiefly on the ground that the statute did not cover transportation for purely personal use. The Supreme Court rejected this contention and also held that the prohibition of the statute was within the power of Congress to regulate interstate commerce. In the light of previous decisions it is difficult to see how a different conclusion could have been reached by the court. In the absence of congressional regulation, states cannot constitutionally exclude articles coming from other states if they are generally recognized as legitimate subjects of commerce. This is put on the ground that such a matter requires national regulation and that the inaction of Congress means that interstate commerce in such articles is to remain open. *Leisy v. Hardin* (1890) 135 U. S. 100, 10 Sup. Ct. 681. Congress, however, has the power to determine that a given matter does not require national regulation and so may permit the state laws to operate. *In re Rahrer* (1891) 140 U. S. 545, 11 Sup. Ct. 865 (holding the "Wilson Act" valid). It can also entirely forbid interstate transportation of such articles as intoxicating liquors, lottery tickets, etc., even though state laws permit their manufacture and sale. *Lottery Case* (1903) 188 U. S. 321, 23 Sup. Ct. 321 (lottery tickets); *Hoke v. United States* (1913) 227 U. S. 308, 33 Sup. Ct. 281 (white slave law); *United States v. Popper* (1899) 98 Fed. 423 (articles intended for the prevention of conception). *Cf.* also *The Abby Dodge* (1912) 223 U. S. 166, 32 Sup. Ct. 310 (excluding from importation deep sea sponges taken by divers—a conservation measure). Moreover, the operation in a particular state of the federal prohibition of interstate commerce in a given article can be made conditional upon the existence of a state law making the bringing of the article into the state in question a criminal offense. *Clark Distilling Co. v. Western Maryland R. Co.* (1916) 242 U. S. 311, 37 Sup. Ct. 180 (sustaining the "Webb Kenyon" Law), commented on in (1917) 26 YALE LAW JOURNAL, 399. The principal case goes one step farther, holding that the operation in a particular state of the federal prohibition of interstate commerce in a given article can be made conditional upon the existence in that state of a state law which while it prohibits the manufacture or sale of the article, does not forbid its importation from other states. The dissenting justices argued that all that the earlier cases had held was that Congress could permit the state laws to operate, not that Congress could

itself conditionally prohibit. This was true of the decision under the Wilson Act—*Leisy v. Hardin*—but the opinion in the *Clark Distilling Co.* case made it very clear that the Webb Kenyon law was sustained on the ground stated above. The nearest analogy is probably that of local option laws, where the state law goes into operation or ceases to operate within a particular portion of the state according to the number of votes cast for or against the proposition involved. Such laws are generally held valid. The cases and arguments of both sides of that question are fully collected in the two cases which follow. *State ex rel. Witter v. Forkner* (1895) 94 Iowa, 1, 62 N. W. 772; *Fouts v. Hood River* (1905) 46 Ore. 492, 81 Pac. 370.

CONTRACTS—ILLEGALITY—COMBINATION TO OBTAIN CONTRACT FROM GOVERNMENT.—The plaintiffs and the defendant, contractors, agreed to join efforts to obtain for the defendant from the United States Government a contract for construction of a military camp. All were to share in performance and in distribution of profits. It was known that the contract would be let not on competitive bids, but on a cost plus percentage basis, with special reference to ability to construct rapidly. The defendant secured the contract; the plaintiffs sued to recover their agreed share of the profits. *Held,* that the plaintiffs were entitled to relief, as the contract was not against public policy. *Anderson v. Blair* (1918, Ala.) 80 So. 31.

The plaintiff, a member of the Imperial Air Fleet Committee, undertook to use his influence with Government officials to secure capital for the development of the defendant's business, for which service he was to be paid a commission. The Government subsequently made an advance to the defendant to assist him in the production of war materials. An action was brought for the unpaid balance of the commission, while the defendant counterclaimed for the part already paid. *Held,* that the contract was illegal and void as contrary to public policy, and would not be enforced in spite of the defendant's failure to plead the illegality, nor would recovery be allowed of the amount already paid under it. *Montefiore v. Menday Motor Company* (1918, K. B.) 119 L. T. Rep. 340.

Combination to obtain contracts from the government is not, today, illegal in itself; and contracts so to combine will be normally enforced by the courts. *Hegness v. Chilberg* (1915, C. C. A. 9th) 224 Fed. 28. It is otherwise when the use of improper means and influence is provided for, which tend to injuriously affect the public service. A contract secured by such means can not of course be enforced against the government. *Crocker v. United States* (1916) 240 U. S. 74, 36 Sup. Ct. 245. Nor can the parties, as being *in pari delicto,* enforce among themselves an agreement so to procure a government contract. *Gulick v. Ward* (1829, Sup. Ct.) 10 N. J. L. 87; but *cf. Whalen v. Brennan* (1892) 34 Neb. 129, 51 N. W. 759 (agreement not to press a bid already entered); on the general subject of *pari delicto,* see (1915) 24 YALE LAW JOURNAL, 255; (1918) 27 *ibid.* 1090. This holds true although the contract is harmless on its face, where the means used to carry it out are illegal. *McMullen v. Hoffman* (1899) 174 U. S. 639, 19 Sup. Ct. 839. And where a tendency which contravenes public policy is apparent in the terms of the agreement, enforcement is refused at once, without inquiry into whether the actual proceedings of the parties under that agreement were unlawful. *Henry County v. Citizens' Bank of Windsor* (1907) 208 Mo. 209, 234; 106 S. W. 622, 628; *Brown v. Columbus First National Bank* (1894) 137 Ind. 655, 37 N. E. 158. And the position of the *Montefiore* case is sustained by authority, that where the illegality appears on the face of the declaration, or is disclosed by the plaintiff's evidence, the court will of its own motion refuse enforcement, whether or not the defendant pleads or seeks to waive illegality.